

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DAN J. BENSON,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION FILE
)	
)	NO. 1:13-CV-0595-WSD
ANDRES FACEMYER,)	
in his individual capacity,)	
)	
Defendant.)	

DEFENDANT’S INITIAL DISCLOSURES

Officer Andres Facemyer (“Defendant”) makes his initial disclosures as follows:

If any of the defendants are improperly identified, state defendants correct identification and state whether such defendant(s) will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response.

RESPONSE: Defendant contends that he is properly identified.

(1) *Provide the names of any parties whom defendants contend are necessary parties to this action, but who have not been named by plaintiff. If defendants contend that there is a question of misjoinder of parties, provide the reasons for defendants’ contention.*

RESPONSE: Defendant does not contend that there is a question of misjoinder of parties.

(2) *Provide a detailed factual basis for the defense or defenses and any counterclaims or cross-claims asserted by defendants in the responsive pleading.*

RESPONSE:

Plaintiff, who lives in Stone Mountain, claims that on February 22, 2011, he traveled to Chastain Park merely to walk along the park trail. At the same time, Amy Wood and her two and a half year old daughter were in the park and claim that they encountered Plaintiff as he sat on a park swing near the water fountain. When Plaintiff initially said “hi,” she kept walking and did not respond because she didn’t feel comfortable. Ms. Wood said later that day on the other side of the park, she again saw Plaintiff, who “ended up” on a swing across from her and her daughter. It was at that time that Plaintiff approached Ms. Wood and her daughter and again said “hi” to which the minor child responded. According to Ms. Wood, Plaintiff told the child that her dress was pretty and, after the child responded that it was pink, Plaintiff responded by asking the two and a half year old girl if “her panties were pretty and matched her dress.” Ms. Wood stated that Plaintiff made her very uncomfortable so she “picked up [her] daughter and carried her toward [their] parked car” and then “stopped a woman (Royce Horn) walking to use her phone to call 911.”

Officer Facemyer was dispatched in response to the 911 call. After interviewing the parties and having Ms. Wood positively identify the plaintiff as the man she had encountered, Officer Facemyer arrested Plaintiff and charged him with child molestation. Plaintiff was also charged with possession of a firearm during the commission of a felony as he was armed with a loaded Ruger .380 pistol at the time of his arrest. .

(4) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which Defendants contend are applicable to this action.

RESPONSE:

I. STATUTES:

O.C.G.A. §16-5-20

O.C.G.A. §16-6-4

42 U.S.C. §1983

II. CASE LAW:

Aboot v. Sangamon County , 705 F.3d 706, 715 (7th Cir. 2013)

Anderson v. Creighton, 483 U.S. 635, 639 (1987)

Brousseau v. Haugen, 543 U.S. 194, 199 (2004)

Devenpeck v. Alford, 543 U.S. 146, 153 (2004)

Dorsey v. Wallace, 134 F.Supp.2d 1364, 1371 (N.D.Ga. 2000)

Fox v. Hayes, 600 F.3d 819, 837 (7th Cir. 2010)

Gonzalez v. Reno, 325 F.3d 1228, 1235 (11th Cir. 2003)

Harlow v. Fitzgerald, 457 U.S. 800, 812 (1982)

Hartsfield v. Lemacks, 50 F.3d 950, 953 (11th Cir. 1995)

Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1264 (11th Cir. 2004)

Jones v. Cannon, 174 F.3d 1271, 1282-83 (11th Cir. 1999)

Lassiter v. Alabama A&M Univ. Bd. Of Trustees, 28 F.3d 1146, 1149 (11th Cir. 1994)

Marsh v. Butler County, Ala., 268 F.3d 1014, 1032, n. 10 (11th Cir. 2001 (*en banc*)).

Ortega v. Christian, 86 F.3d 1521, 1525 (11th Cir. 1996)

Post v. City of Ft. Lauderdale, 7 F.3d 1552, 1557 (11th Cir. 1993)

Redd v. Enterprise, 140 F.3d 1378, 1382 (11th Cir. 1998)

United States Dep't of State v. Reno, 502 U.S. 164, 179 (1991)

Wilson v. Layne, 526 U.S. 603, 609 (1999)

Wood v. Kesler, 323 F.3d 872, 877-78 (11th Cir. 2003)

(5) *Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subject of the information. (Attach witness list to Initial Disclosures as Attachment A).*

RESPONSE: See Attachment A.

(6) *Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in F.R.Civ. P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports as Attachment B).*

RESPONSE: Defendant has not retained any experts as of the making of these disclosures. Defendant reserves the right to supplement this response at such time as any expert is retained.

(7) *Provide a copy of, or description by category and location of, all documents, data, compilations, and tangible things in your possession, custody, or control that are relevant to the disputed facts alleged with particularity in the pleadings. (Attach document list and descriptions to Initial Disclosures as*

Attachment C).

RESPONSE: See Attachment C.

(8) *In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of or description by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying under F.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D).*

RESPONSE: Defendant has not alleged any damages for defending this action. Defendant reserves the right to amend this response.

(9) *If defendants contend that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendants in this matter, state the full name, address and telephone number of such person or entity and describe in detail the basis of such liability.*

RESPONSE: Defendant contends that he is not liable to Plaintiff because had both arguable probable and actual probable cause to arrest Plaintiff for child molestation and possession of a firearm during the commission of a felony. Defendant reserves the right to amend this response should discovery reveal parties who may be liable to Plaintiff.

(10) *Attach for inspection and copying as under F.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse from payments to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E).*

RESPONSE: Defendant does not have such insurance coverage.

Respectfully submitted this 13th day of November, 2014.

//s// Veronica L. Hoffler

ROBERT N. GODFREY

Chief Counsel

Georgia Bar No. 298550

TAMARA N. BAINES

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Attachment A

Dan Benson
c/o Jeffrey Filipovits
Filipovits Law Firm, P.C.
2900 Chamblee Tucker Road
Building 1
Atlanta, GA 30341

{Plaintiff; facts surrounding incident that is subject of lawsuit}

Officer Andres Facemyer
c/o Tamara N. Baines
City of Atlanta Law Department
68 Mitchell Street, SW
Suite 4100
Atlanta, Georgia 30303

{Facts surrounding incident that is subject of lawsuit}

Royce Horne
5634 Chamblee Dunwoody Road
Dunwoody, GA 33038

{Facts surrounding incident that is subject of lawsuit}

Amy Wood
2180 Howell Mill Road
Atlanta, GA 30318

{Facts surrounding incident that is subject of lawsuit}

Officer Scott Ormond
c/o Tamara N. Baines
City of Atlanta Law Department
68 Mitchell Street, SW
Suite 4100
Atlanta, Georgia 30303

{Facts surrounding incident that is subject of lawsuit}

Officer Drew Bahry
c/o Tamara N. Baines
City of Atlanta Law Department
68 Mitchell Street, SW
Suite 4100
Atlanta, Georgia 30303

{Facts surrounding incident that is subject of lawsuit}

Officer Arthur Nixon
c/o Tamara N. Baines
City of Atlanta Law Department
68 Mitchell Street, SW
Suite 4100
Atlanta, Georgia 30303

{Facts surrounding incident that is subject of lawsuit}

Melissa Redman
Office of the Fulton County District Attorney
Crimes against Women and Children
136 Pryor Street, SW, Third Floor
Atlanta, GA 30303

{Facts surrounding incident that is subject of lawsuit}

ATTACHMENT C

1. City of Atlanta Standard Operating Procedures
2. Personnel Files for Officer Andres Facemyer
3. Arrest Citations for Dan Benson
4. Atlanta Incident Report

Defendant reserves the right to supplement this list as information becomes available.

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v.)	CIVIL ACTION FILE
)	
)	NO. 1:13-CV-0595
ANDRES FACEMYER,)	
in his individual capacity,)	
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Defendant.)	

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2014, I electronically filed the foregoing **DEFENDANT’S INITIAL DISCLOSURES** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification to the following attorneys of record:

c/o Jeffrey Filipovits
Filipovits Law Firm, P.C.
2900 Chamblee Tucker Road
Building 1
Atlanta, GA 30341

/s/ Veronica L. Hoffler
VERONICA L. HOFFLER
Assistant City Attorney